

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

VESTA CORPORATION,

Plaintiff,

V.

VESTA MANAGEMENT SERVICES, LLC,

Defendant.

CIVIL ACTION NO. 4:15-CV-00719

PLAINTIFF VESTA CORPORATION'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff Vesta Corporation ("Vesta Corporation") respectfully moves for summary judgment against defendant Vesta Management Services, LLC ("Vesta Management") as to both counts of its Complaint, which alleges that defendant Vesta Management has infringed and continues to infringe its VESTA service mark in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), and Texas Business & Commerce Code § 16.102.

As set forth more fully in the accompanying Memorandum of Law and exhibits thereto, defendant Vesta Management has used in its advertising and marketing, including in its corporate name and logo, marks identical or similar to plaintiff Vesta Corporation's protected VESTA mark, federal registration number 2,535,779, without authorization from plaintiff Vesta Corporation. Plaintiff Vesta Corporation and defendant Vesta Management are in the same industry and provide services in some of the same geographic locations. Consequently, defendant Vesta Management's unauthorized use of the VESTA mark has confused in fact and is substantially likely to continue to confuse consumers.

Therefore, the Court should issue a permanent injunction pursuant to 15 U.S.C. § 1116 and Tex. Bus. & Com. Code § 16.102(c) enjoining and restraining defendant Vesta Management, its officers, directors, agents, servants, employees, members, successors, assigns, and all those in privity with or in active concert or participation with them from:

- i. Using the VESTA service mark or any confusingly similar mark, symbol, device, logo, word, term or name, or any combination thereof, in connection with their business or the sale of any goods and services in any manner or context whatsoever without prior written authorization from plaintiff Vesta Corporation;
- ii. Making any statement or representation and/or performing any acts likely to lead the public, or individual members of the public, to incorrectly believe that defendant Vesta Management is directly or indirectly associated or connected with, or sponsored or approved by, plaintiff Vesta Corporation;
- iii. Engaging in any acts or activities calculated to trade upon plaintiff Vesta Corporation's VESTA service mark or the reputation or goodwill of plaintiff Vesta Corporation, or in any manner to falsely designate defendant Vesta Management's goods and/or services as originating with, being associated with, or sponsored or approved by plaintiff Vesta Corporation; and
- iv. Committing any other act that infringes or dilutes the quality or value of plaintiff Vesta Corporation's VESTA service mark or constitutes an unfair trade practice, unfair competition, or false advertising.

Moreover, pursuant to 15 U.S.C. § 1117(a), the Court should award to plaintiff Vesta Corporation its attorneys' fees and costs incurred in connection with this action.

Respectfully submitted,

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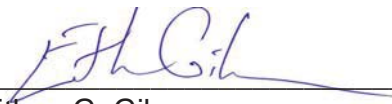
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CERTIFICATE OF SERVICE

The undersigned certifies a true and correct copy of the foregoing was electronically filed on October 23, 2015, with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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